IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

A.R.No.30 of 2006

APPLICANT:-

JOHNY J.VILANGADAN,
RAILWAY CONTRACTOR,
VILANGADAN HOUSE, VYTTILA POST,
KOCHI-682 019.

BY ADV. SRI.V.J.JOSEPH
SMT.M.V.LIGI

RESPONDENTS:-

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1. THE GENERAL MANAGER,
   SOUTHERN RAILWAY,
   HEADQUARTERS OFFICE,
   PARK TOWN, CHENNAI-3.

2. THE DIVISIONAL RAILWAY MANAGER (WORKS),
   SOUTHERN RAILWAY, DIVISIONAL RAILWAY OFFICE,
   THIRUVANANTHAPURAM-14.

BY STANDING COUNSEL SRI.ALEXANDER THOMAS

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 13/12/2006, ALONG WITH A.R. NO.31 OF 2006 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K.Bali,C.J.

Arbitration Request Nos.30, 31, 32, 33, 34, 35 & 36 of 2006

Dated, this the 13th day of December, 2006

ORDER

V.K.Bali,C.J. (Oral)

By this common order I propose to dispose seven connected Arbitration Requests/Applications, as the same are based upon identical facts.

2. The bare minimum facts that need necessary mention are extracted from Arbitration Request No.30 of 2006 in **Johny J.Vilangadan** v. **The General Manager, Southern Railway and another**. Request for appointment of Arbitrator has been made under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 and the Scheme. It is the case of the applicant that an agreement has been entered into between the applicant and the Divisional Railway Manager (Works), Trivandrum, Southern Railway dated 28.6.1995. 30th November, 2005 was stipulated as the date for completion of the work. On 9.6.2004, the applicant notified the final claims and on 11.6.2004, the respondents received final claim notice, Exhibit A2. Despite receipt of the notice aforesaid, the respondents failed

to settle the claims. On 4.10.2004, the applicant submitted demand for arbitration. On 5.10.2004, 1st respondent received Exhibit A3 demand for arbitration, but despite the lapse of more than 30 days of statutory period from the receipt of Exhibit A3, the 1st respondent did not appoint Arbitrator. On 3.4.2006, the applicant sent letter by registered post with Acknowledgment Due nominating Arbitrator as per Exhibit A6 judgment dated 21st March, 2006 passed in A.R.No.4 of 2005 and other connected matters.

3. On notice, respondents have entered appearance and filed short counter affidavit. There would be no need to go into the details of the counter affidavit as the respondent-Railway has indeed made an appointment, which has been accepted by the petitioner as would be made out from Exhibit A7 dated 3.4.2006 which reads as follows:

> "In view of the judgment dated 21.03.2006 passed in the above cases, I hereby nominate Sri.K.Masthan Rao, Deputy Chief Engineer, Constructions, Southern Railway, Ernakulam to appoint as the Arbitrator".

4. Counsel for the applicant vehemently contends that even though Sri.K.Masthan Rao may be one of the persons in the panel for appointment of Arbitrator in the applications earlier made which culminated into order dated 21st March, 2006, but the applicant had a limited choice at that time as it was only from the panel an Arbitrator could be appointed, but the respondents have now forfeited their right to appoint an Arbitrator as, surely, such an appointment is made after the filing of these applications. Learned counsel relies upon the decision of the Honourable Supreme Court in **Punj Lloyd Ltd**. v. **Petronet MHB Ltd**. [(2006) 2 SCC 638]. Counsel further contends that once the respondents have forfeited their right to make an appointment of an Arbitrator, the applicant would certainly seek appointment of an independent Arbitrator and the very fact that Sri.K.Masthan Rao was named by the applicant himself as an Arbitrator earlier was under circumstances when the applicant had no other choice.

5. There cannot be any exception to the contention of the learned counsel for the applicant. There is indeed an

arbitration clause in the agreement and the matter has to be referred to an Arbitrator. For appointment of Arbitrator, there is no dispute. Once, the respondents have lost right to make appointment of Arbitrator, this Court would consider it appropriate to make appointment of a former Judge of this Court as Arbitrator. It is urged by the learned counsel for the Railways that an Engineer with M.Tech. Degree has to be an Arbitrator because of the subject requiring expertise of such a person. The Court only directs that the Arbitrator may seek assistance of an Engineer with M.Tech. Degree. Sri.Justice R.Bhaskaran, former Judge of this Court, residing at "Sreekrishna Kripa", Kaloor, Kochi-682017 is appointed as Arbitrator.

The applications are disposed of as indicated above.

V.K.Bali
Chief Justice

vku/-